

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9657]

RIN 1545-BL73

Regulations Relating to Information Reporting by Foreign Financial Institutions and Withholding on Certain Payments to Foreign Financial Institutions and Other Foreign Entities; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to final and temporary regulations (TD 9657), which were published in the **Federal Register** on Thursday, March 6, 2014 (79 FR 12812). The regulations relate to information reporting by foreign financial institutions (FFIs) with respect to U.S. accounts and withholding on certain payments to FFIs and other foreign entities.

DATES: Effective Date: These corrections are effective on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**.

Applicability Date: These corrections are applicable on March 6, 2014.

FOR FURTHER INFORMATION CONTACT: Nancy Lee, (202) 317-6942 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR

part 1) under sections 1471 through 1474 of the Internal Revenue Code. Sections 1471 through 1474 were added to the Code, as Chapter 4 of Subtitle A, by the Hiring Incentives to Restore Employment Act of 2010 (Public Law 111-147, 124 Stat. 71). The final and temporary regulations that are the subject of these corrections are §§1.1471-1T, 1.1471-2, 1.1471-2T, 1.1471-3T, 1.1471-4, 1.1471-4T, 1.1471-5T, 1.1471-6T, 1.1472-1T, 1.1473-1T, and 1.1474-1T. These regulations affect persons making certain U.S.-related payments to FFIs and other foreign entities, and affect payments by FFIs to other persons.

Need for Correction

As published, the final and temporary regulations under chapter 4 contain a number of items that need to be corrected or clarified. Several citations and cross references are corrected. These correcting amendments also include the addition, deletion, or modification of temporary regulatory language to clarify the relevant provisions to meet their intended purposes. The addition of final regulatory language only includes language that was inadvertently removed in the final and temporary regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1 - INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1471-1 is also issued under 26 U.S.C. 1471

Section 1.1471-2 is also issued under 26 U.S.C. 1471

Section 1.1471-3 is also issued under 26 U.S.C. 1471

Section 1.1471-4 is also issued under 26 U.S.C. 1471

Section 1.1471-5 is also issued under 26 U.S.C. 1471

Section 1.1471-6 is also issued under 26 U.S.C. 1471

Section 1.1472-1 is also issued under 26 U.S.C. 1472

Section 1.1473-1 is also issued under 26 U.S.C. 1473

Section 1.1474-1 is also issued under 26 U.S.C. 1474

Par. 2. Section 1.1471-1T is amended by revising paragraphs (b)(20) and (b)(98).

The revisions read as follows:

§1.1471-1T Scope of chapter 4 and definitions (temporary).

* * * * *

(b) * * *

(20) Chapter 4 withholding rate pool. The term chapter 4 withholding rate pool means a pool of payees that are nonparticipating FFIs provided on a chapter 4 withholding statement (as described in §1.1471-3(c)(3)(iii)(B)(3)) to which a withholdable payment is allocated. The term chapter 4 withholding rate pool also means a pool provided on an FFI withholding statement (as described in §1.1471-3(c)(3)(iii)(B)(2)) to which a withholdable payment is allocated to--

(i) A pool of payees consisting of each class of recalcitrant account holders

described in §1.1471-4(d)(6) (or with respect to an FFI that is a QI, a single pool of recalcitrant account holders without the need to subdivide into each class of recalcitrant account holders described in §1.1471-4(d)(6)), including a separate pool of account holders to which the escrow procedures for dormant accounts apply; or

(ii) A pool of payees that are U.S. persons as described in §1.1471-3(c)(3)(iii)(B)(2).

* * * * *

(98) Payor. The term payor has the meaning set forth in §§31.3406(a)-2 and 1.6049-4(a)(2) and generally includes a withholding agent.

* * * * *

Par. 3. Section 1.1471-2 is amended by revising paragraph (a)(2)(ii) and adding paragraphs (a)(2)(iii)(A)(1) through (4) and (a)(4)(ii)(B)(1) through (2).

The revisions and additions read as follows:

§1.1471-2 Requirement to deduct and withhold tax on withholdable payments to certain FFIs.

(a) * * *

(2) * * *

(ii) [Reserved]. For further guidance, see §1.1471-2T(a)(2)(ii).

* * * * *

(iii) * * *

(A) * * *

(1) The withholding agent is a participating FFI, reporting Model 1 FFI, QI, or a U.S. withholding agent;

(2) The person who receives the payment is a participating FFI or registered deemed-compliant FFI that acts as a QI with respect to the payment;

(3) The person who receives the payment provides the withholding agent, at or before the time of the payment, with a valid intermediary withholding certificate with respect to the payment that notifies the withholding agent that it has elected to be withheld upon, certifies that it is not assuming primary withholding responsibility under chapter 3, and designates whether such election is made for all accounts held with the withholding agent or for the specific accounts identified on the withholding certificate; and

(4) The intermediary withholding certificate is accompanied by a withholding statement described in §1.1471-3(c)(3)(iii)(B).

* * * * *

(4) * * *

(ii) * * *

(B) * * *

(1) The withholding agent has available as part of its electronically searchable information a designation for the payee as a QI or NQI; or

(2) For an account maintained in the United States, the payee is presumed to be a foreign entity under §1.1471-3(f) or is documented as a foreign entity for purposes of chapter 3 or 61, and the withholding agent has recorded as part of its electronically searchable information one of the following North American Industry Classification System or Standard Industrial Classification codes indicating that the payee is a financial institution:

- (i) Commercial Banking (NAICS 522110).
- (ii) Savings Institutions (NAICS 522120).
- (iii) Credit Unions (NAICS 522130).
- (iv) Other Depository Credit Intermediation (NAICS 522190).
- (v) Investment Banking and Securities Dealing (NAICS 523110).
- (vi) Securities Brokerage (NAICS 523120).
- (vii) Commodity Contracts Dealing (NAICS 523130).
- (viii) Commodity Contracts Brokerage (NAICS 523140).
- (ix) Miscellaneous Financial Investment Activities (NAICS 523999).
- (x) Open-End Investment Funds (NAICS 525910).
- (xi) Commercial Banks, NEC (SIC 6029).
- (xii) Branches and Agencies of Foreign Banks (branches) (SIC 6081).
- (xiii) Foreign Trade and International Banking Institutions (SIC 6082).
- (xiv) Asset-Backed Securities (SIC 6189).
- (xv) Security & Commodity Brokers, Dealers, Exchanges & Services (SIC 6200).
- (xvi) Security Brokers, Dealers & Flotation Companies (SIC 6211).
- (xvii) Commodity Contracts Brokers & Dealers (SIC 6221).
- (xviii) Unit Investment Trusts, Face-Amount Certificate Offices, and Closed-End Management Investment Offices (SIC 6726).

* * * * *

Par. 4. Section 1.1471-2T is amended by revising paragraph (a)(2)(i) to read as follows:

§1.1471-2T Requirement to deduct and withhold tax on withholdable payments to

certain FFIs (temporary).

(a) * * *

(2) * * *

(i) Requirement to withhold on payments of U.S. source FDAP income to participating FFIs and deemed-compliant FFIs that are NQIs, NWP, or NWTs. A withholding agent that, after June 30, 2014, makes a payment of U.S. source FDAP income to a participating FFI or deemed-compliant FFI that is an NQI receiving the payment as an intermediary, or a NWP or NWT, must withhold 30 percent of the payment unless the withholding is reduced under this paragraph (a)(2)(i). A withholding agent is not required to withhold on a payment, or portion of a payment, that it can reliably associate, in the manner described in §1.1471-3(c)(2), with a valid intermediary or flow-through withholding certificate that meets the requirements of §1.1471-3(d)(4) and a withholding statement that meets the requirements of §1.1471-3(c)(3)(iii)(B) and that allocates the payment or portion of the payment to payees for which no withholding is required under chapter 4. Further, a withholding agent is not required to withhold on a payment that it can reliably associate with documentation indicating that the payee is a U.S. branch treated as a U.S. person (as defined in §1.1471-1(b)(135)).

* * * * *

Par. 5. Section 1.1471-3T is amended by:

1. Revising paragraphs (a)(3)(vi), (c)(3)(iii)(A)(5), (c)(3)(iii)(B)(1), (c)(6)(iv), (d)(4)(i), (d)(11)(xii)(B), (e)(4)(ii)(A), (e)(4)(iv)(A), and (e)(4)(vii)(B).

2. Adding paragraphs (e)(4)(vii)(C) and (D).

The revisions and additions read as follows:

§1.1471-3T Identification of payee (temporary).

(a) * * *

(3) * * *

(vi) U.S. branch of certain foreign banks or foreign insurance companies. A withholdable payment to a U.S. branch of either a participating FFI, registered deemed-compliant FFI, or NFFE is a payment to a U.S. person if the U.S. branch is treated as a U.S. person under §1.1441-1(b)(2)(iv)(A). In such case, the U.S. branch is treated as the payee. A U.S. branch treated as a U.S. person (as defined in §1.1471-1(b)(135)), however, is not treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent for purposes of chapter 4. Accordingly, a U.S. branch treated as a U.S. person must furnish a withholding certificate on a Form W-8 to certify its chapter 4 status (and not a Form W-9, "Request for Taxpayer Identification Number and Certification"). See also paragraph (f)(6) of this section for the rules under which a withholding agent can presume a payment constitutes income that is effectively connected with a U.S. trade or business. A U.S. branch treated as a U.S. person may not make an election to be withheld upon, as described in section 1471(b)(3) and §1.1471-2(a)(2)(iii), for purposes of chapter 4. See §1.1471-4(c)(2)(v) for the rule requiring a U.S. branch that has elected to be treated as a U.S. person to apply the due diligence rules applicable to a U.S. withholding agent in lieu of those otherwise applicable to a participating FFI. See also §1.1474-1(i)(1) and (2) for the requirement of a U.S. branch to report information regarding certain U.S. owners of owner documented FFIs and passive NFFEs. See §1.1471-4(d) for rules for when a U.S. branch reports as a U.S. person.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(A) * * *

(5) A GIIN, in the case of a participating FFI or a registered deemed-compliant FFI (including a U.S. branch of such an entity, whether or not such branch is treated as a U.S. person, and including a QI, WP, or WT that is a participating FFI or registered deemed-compliant FFI), and an EIN in the case of a QI, WP, or WT. Additionally, if a branch (other than a U.S. branch) of a participating FFI or registered deemed-compliant FFI outside of its country of residence acts as an intermediary, a GIIN of such branch must be provided on the withholding certificate. In the case of a U.S. branch, the GIIN provided must be the GIIN assigned to the participating FFI or registered deemed-compliant FFI.

* * * * *

(B) * * *

(1) In general. A withholding statement forms an integral part of the withholding certificate and the penalties of perjury statement provided on the withholding certificate applies to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which the person submitting the form and the withholding agent mutually agree, including electronically. A withholding statement may be provided electronically only if it meets the requirements of §1.1441-1(e)(3)(iv)(B). The withholding statement must be updated as often as necessary for the

withholding agent to meet its reporting and withholding obligations under chapter 4. A withholding agent will be liable for tax, interest, and penalties under §1.1474-1(a) to the extent it does not follow the presumption rules of paragraph (f) of this section for any payment, or portion thereof, for which a withholding statement is required and the withholding agent does not have a valid withholding statement prior to making a payment. A withholding agent that is making a withholdable payment for which a withholding statement is also required for purposes of chapter 3 may only rely upon the withholding statement if, in addition to providing the information required by paragraph (c)(3)(iii)(B) of this section, the withholding statement also includes all of the information required for purposes of chapter 3 and specifies the chapter 4 status of each payee or pool of payees identified on the withholding statement for purposes of chapter 3.

* * * * *

(6) * * *

(iv) Electronic transmission of withholding certificate, written statement, and documentary evidence. A withholding agent may accept a withholding certificate (including an acceptable substitute form), a written statement, or other such form as the IRS may prescribe, electronically in accordance with the requirements set forth in §1.1441-1(e)(4)(iv).

* * * * *

(d) * * *

(4) * * *

(i) In general. Except as otherwise provided in paragraphs (d)(4)(ii) through (iv) or paragraphs (e)(3)(i) and (ii) of this section, a withholding agent may treat a payee as a

participating FFI or registered deemed-compliant FFI only if the withholding agent has a withholding certificate identifying the payee as a participating FFI, registered deemed-compliant FFI, or branch thereof (including an entity that is disregarded as an entity separate from the FFI), and the withholding certificate contains a GIIN for the payee that is verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (indicating when a withholding agent may rely upon a GIIN). For payments made prior to January 1, 2016, a registered deemed-compliant FFI that is a sponsored FFI must provide the GIIN of its sponsoring entity on the withholding certificate if the sponsored FFI has not obtained a GIIN, which the withholding agent has verified against the published IRS FFI list in the manner described in paragraph (e)(3) of this section (substituting the term sponsored FFI for the term sponsored direct reporting NFFE). See paragraph (c)(3)(iii) of this section for additional requirements that apply to a valid withholding certificate provided by a participating FFI or registered deemed-compliant FFI that is a flow-through entity or is acting as an intermediary with respect to the payment, or by a U.S. branch of a participating FFI or registered deemed-compliant FFI (including a U.S. entity that is disregarded as an entity separate from the FFI).

* * * * *

(11) * * *

(xii) * * *

(B) Offshore obligations. A participating FFI that makes a payment with respect to an offshore obligation may treat the payment as made to an excepted inter-affiliate FFI described in §1.1471-5(e)(5)(iv) if the participating FFI obtains a written statement in

which the payee certifies that it is a foreign entity operating as an excepted inter-affiliate FFI and that it is a member of an expanded affiliated group of participating FFIs or registered deemed-compliant FFIs. In the case of a payment of U.S. source FDAP income, the written statement must also indicate that the payee is the beneficial owner and must be supplemented with documentary evidence supporting the payee's claim of foreign status (as described in paragraph (c)(5)(i) of this section).

* * * * *

(e) * * *

(4) * * *

(ii) * * *

(A) In general. A withholding agent has reason to know that a withholding certificate provided by a person is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the person, the withholding certificate contains any information that is inconsistent with the person's claim, the withholding agent has other account information that is inconsistent with the person's claim, or the withholding certificate lacks information necessary to establish entitlement to an exemption from withholding for chapter 4 purposes. Except as otherwise provided in this paragraph (e)(4)(ii)(A), a withholding agent that is a financial institution or other entity described in §1.1441-7(b)(3) and that has obtained a withholding certificate to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect only if there are U.S. indicia, as described in §1.1441-7(b)(5), associated with the person and for which appropriate documentation

sufficient to cure the U.S. indicia has not been obtained in accordance with §1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also §1.1441-1(e)(4)(ii)(D) for requirements that apply when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under §1.1441-1(b)(3)(iv). A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

* * * * *

(iv) * * *

(A) In general. A withholding agent may not treat documentary evidence provided by a person as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by an individual and the photograph or signature on the documentary evidence does not match the appearance or signature of the person presenting the document. A withholding agent may not treat documentary evidence as valid if the documentary evidence contains information that is inconsistent with the person's claim as to its chapter 4 status, the withholding agent has other account information that is inconsistent with the person's chapter 4 status, or the documentary evidence lacks information necessary to establish the person's chapter 4 status. Additionally, a withholding agent that is a financial institution under §1.1471-5(e), or other entity as described in §1.1441-7(b)(3) that has obtained documentary evidence to reliably associate a payment to a foreign person under paragraph (c) of this section has reason to know that the person's claim of foreign status is unreliable or incorrect

only if there are U.S. indicia, as described in §1.1441-7(b)(8), associated with the person and appropriate documentation sufficient to cure the U.S. indicia has not been obtained in accordance with §1.1441-7(b) within 90 days of when the U.S. indicia was first identified by the withholding agent. See also §1.1441-1(e)(4)(ii)(D) for requirements when a change in circumstances occurs for purposes of chapter 3 and the related grace period allowed under §1.1441-1(b)(3)(iv).

* * * * *

(vii) * * *

(B) Reason to know there are U.S. indicia associated with preexisting obligations.

With respect to a preexisting obligation, a withholding agent may apply the limits on reason to know described in §1.1441-7(b)(3)(ii) for a person that the withholding agent has previously documented for purposes of chapters 3 or 61. A withholding agent that applies the limits on reason to know described in §1.1441-7(b)(3)(ii) must, however, review for U.S. indicia any additional documentation upon which the withholding agent is relying to determine the chapter 4 status of the person, if any.

(C) and (D) [Reserved]. For further guidance, see §1.1471-3(e)(4)(vii)(C) and (D).

* * * * *

Par. 6. Section 1.1471-4 is amended by revising paragraphs (d)(6)(vi) and (vii) and adding paragraphs (d)(7)(ii)(A)(1) through (3) to read as follows:

§1.1471-4 FFI agreement.

* * * * *

(d) * * *

(6) * * *

(vi) [Reserved]. For further guidance, see §1.1471-4T(d)(6)(vi).

(vii) Record retention requirements. A participating FFI that produces, in the ordinary course of its business, account statements that summarize the activity (including withdrawals, transfers, and closures) of an account held by a recalcitrant account holder described in paragraph (d)(6)(i)(B) of this section for any calendar year in which the account was required to be reported under paragraph (d)(6) of this section must retain a record of such account statements. Such record must be retained for the longer of six years or the retention period under the FFI's normal business procedures. A participating FFI may be required to extend the six year retention period if the IRS requests such an extension prior to the expiration of the six year period.

* * * * *

(7) * * *

(ii) * * *

(A) * * *

(1) The name, address, and TIN of each specified U.S. person who is an account holder and, in the case of any account holder that is an NFFE that is a U.S. owned foreign entity or that is an owner-documented FFI, the name of such entity and the name, address, and TIN of each substantial U.S. owner of such NFFE or, in the case of an owner-documented FFI, of each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2);

(2) The account balance or value as of the end of the relevant calendar year, or if the account was closed after the effective date of the FFI agreement, the amount or value withdrawn or transferred from the account in connection with closure; and

(3) The account number of the account.

* * * * *

Par. 7. Section 1.1471-4T is amended by revising paragraphs (b)(3)(iii), (d)(2)(ii)(F), (d)(2)(iii)(B) introductory text, and (d)(7)(iv)(B) to read as follows:

§1.1471-4T FFI agreement (temporary).

* * * * *

(b) * * *

(3) * * *

(iii) Election to withhold under section 3406. A participating FFI may elect to satisfy its withholding obligation under paragraph (b)(1) of this section with respect to recalcitrant account holders that are also U.S. non-exempt recipients subject to backup withholding under section 3406 receiving withholdable payments, to the extent that the payments also constitute reportable payments, by applying withholding under section 3406 at the backup withholding rate to such withholdable payments. A participating FFI may make the election described in this paragraph only if it complies with the information reporting rules under chapter 61 with respect to payments to which backup withholding applies. Nothing in this paragraph relieves a participating FFI of its requirement to backup withhold under section 3406 with respect to reportable payments that are not also withholdable payments. See §1.1474-6(f) for the general rule that satisfying withholding requirements under chapter 4 will satisfy backup withholding requirements under section 3406 for a payment that is both a withholdable payment and a reportable payment.

* * * * *

(d) * * *

(2) * * *

(ii) * * *

(F) Reporting by participating FFIs (including QIs, WPs, WTs, and certain U.S. branches not treated as U.S. persons) for accounts of nonparticipating FFIs (transitional). Except as otherwise provided in the instructions to Form 8966, "FATCA Report," if a participating FFI (including a QI, WP, WT, or U.S. branch of a participating FFI or registered deemed-compliant FFI that is not treated as a U.S. person) maintains an account for a nonparticipating FFI (including a limited branch and limited FFI treated as a nonparticipating FFI), the participating FFI must report on Form 8966 the name and address of the nonparticipating FFI, and the aggregate amount of foreign source payments, as described in paragraph (d)(4)(iv) of this section, paid to or with respect to each such account (foreign reportable amount) for each of the calendar years 2015 and 2016. If, however, the participating FFI is prohibited under domestic law from reporting on a specific payee basis without consent from the nonparticipating FFI account holder and the participating FFI has not been able to obtain such consent, the participating FFI may instead report the aggregate number of accounts held by such non-consenting nonparticipating FFIs and the aggregate amount of foreign reportable amounts paid with respect to such accounts, as described in paragraph (d)(4)(iv) of this section, during the calendar year. A participating FFI may, in lieu of reporting only foreign reportable amounts, report all income, gross proceeds, and redemptions (irrespective of the source) paid to the nonparticipating FFI's account by the participating FFI during the calendar year. In addition, the participating FFI must retain the account statements

related to such nonparticipating FFI accounts. See paragraphs (d)(6)(iv), (v), (vi) and (vii) of this section for rules relating to reporting on recalcitrant account holders. Form 8966 shall be filed electronically with the IRS on or before March 31 of the year following the end of the calendar year to which the form relates.

(iii) * * *

(B) Special reporting rules for U.S. branches treated as U.S. persons. A U.S. branch treated as a U.S. person (as defined in §1.1471-1(b)(135)) shall be treated as having satisfied the reporting requirements described in paragraph (d)(2)(i) of this section if it reports under--

* * * * *

(7) * * *

(iv) * * *

(B) Special determination date and timing for reporting with respect to the 2014 calendar year. With respect to the 2014 calendar year, a participating FFI must report under paragraph (d)(3) or (5) of this section on all accounts that are identified and documented under paragraph (c) of this section as U.S. accounts or accounts held by owner-documented FFIs as of December 31, 2014, (or as of the date an account is closed if the account is closed prior to December 31, 2014) if such account was outstanding on July 1, 2014. Reporting for the 2014 calendar year shall be filed with the IRS on or before March 31, 2015. However, a U.S. payor (including a U.S. branch treated as a U.S. person (as defined in §1.1471-1(b)(135))) that reports in accordance with paragraph (d)(2)(iii) of this section may report all or a portion of its U.S. accounts and accounts held by owner-documented FFIs in accordance with the dates otherwise

applicable to reporting under chapter 61 with respect to the 2014 calendar year.

* * * * *

Par. 8. Section 1.1471-5T is amended by revising paragraph (f)(2)(iii) introductory text and the heading of paragraph (i), removing paragraph (i) introductory text, and revising paragraph (i)(1) to read as follows:

§1.1471-5T Definitions applicable to section 1471 (temporary).

* * * * *

(f) * * *

(2) * * *

(iii) Sponsored, closely held investment vehicles. Subject to the provisions of paragraph (f)(2)(iii)(E) of this section, an FFI is described in this paragraph (f)(2)(iii) if it meets the requirements described in paragraphs (f)(2)(iii)(A) through (D) of this section.

* * * * *

(i) Expanded affiliated group--(1) Scope of paragraph. This paragraph (i) defines the term expanded affiliated group for purposes of chapter 4. For the requirements of a participating FFI with respect to members of its expanded affiliated group that are FFIs, see §1.1471-4(e).

* * * * *

Par. 9. Section 1.1471-6T is amended by revising paragraph (h)(2) to read as follows:

§1.1471-6T Payments beneficially owned by exempt beneficial owners (temporary).

* * * * *

(h) * * *

(2) Limitation. Paragraph (h)(1) of this section will not apply to treat an exempt beneficial owner as engaged in a commercial financial activity if--

(i) The entity undertakes commercial financial activity described in paragraph (h)(1) of this section solely for or at the direction of other exempt beneficial owners and such commercial financial activity is consistent with the purposes of the entity;

(ii) The entity has no outstanding debt that would be a financial account under §1.1471-5(b)(1)(iii); and

(iii) The entity otherwise maintains financial accounts only for exempt beneficial owners, or, in the case of a foreign central bank of issue as described in paragraph (d), the entity only maintains financial accounts that are depository accounts for current or former employees of the entity (and the spouses and children of such employees) or financial accounts for exempt beneficial owners.

* * * * *

Par. 10. Section 1.1472-1T is amended by revising paragraphs (c)(1)(ii) and (c)(3)(iii) to read as follows:

§1.1472-1T Withholding on NFFEs (temporary).

* * * * *

(c) * * *

(1) * * *

(ii) Certain affiliated entities related to a publicly traded corporation. A NFFE is described in this paragraph (c)(1)(ii) if it is a corporation that is a member of the same expanded affiliated group (as defined in §1.1471-5(i)) as a corporation described in paragraph (c)(1)(i) of this section (without regard to whether such corporation is a

NFFE).

* * * * *

(3) * * *

(iii) The NFFE must obtain a written certification (contained on a withholding certificate or in a written statement) from each person that would be treated as a substantial U.S. owner of the NFFE if such person were a specified U.S. person. Such written certification must indicate whether the person is a substantial U.S. owner of the NFFE, and if so, the name, address and TIN of the person. If the NFFE has reason to know that such written certification is unreliable or incorrect, it must contact the person and request a revised written certification. If no revised written certification is received, the NFFE must treat the person as a substantial U.S. owner and report on Form 8966 the information required under paragraph (c)(3)(ii) of this section. The NFFE has reason to know that such a written certification is unreliable or incorrect if the certification is inconsistent with information in the NFFE's possession, including information that the NFFE provides to a financial institution in order for the financial institution to meet its AML or other account identification due diligence procedures with respect to the NFFE's account, information that is publicly available, or U.S. indicia as described in §1.1441-7(b) for which appropriate documentation sufficient to cure the U.S. indicia in the manner set forth in §1.1441-7(b)(8) has not been obtained.

* * * * *

Par. 11. Section 1.1473-1T is amended by revising paragraphs (a)(4)(vi) and (a)(4)(vii) to read as follows:

§1.1473-1T Section 1473 definitions (temporary).

(a) * * *

(4) * * *

(vi) Offshore payments of U.S. source FDAP income prior to 2017 (transitional).

A payment with respect to an offshore obligation (as defined in §1.1471-1(b)(88)) made prior to January 1, 2017, if such payment is U.S. source FDAP income and made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment. Additionally, a payment with respect to an account, obligation, contract, or other instrument that is issued or maintained by an entity other than a financial institution and that would be treated as an offshore obligation under §1.6049-5(c)(1) (applied by substituting the term entity for the term financial institution (as defined in §1.1471-5(e)) in each place that it appears), made prior to January 1, 2017, if such payment is U.S. source FDAP and made by a person that is not acting as an intermediary or as a WP or WT with respect to the payment is not a withholdable payment under paragraph (a)(1) of this section. The exception for offshore payments of U.S. source FDAP income provided in the preceding sentences shall not apply, however, in the case of a flow-through entity that has a residual withholding requirement with respect to its partners, owners, or beneficiaries under §1.1471-2(a)(2)(ii), or in the case of payments made with respect to debt or equity issued by a U.S. person (excluding interest payments made by a foreign branch of a U.S. financial institution with respect to depository accounts it maintains). For purposes of this paragraph (a)(4)(vi), an intermediary includes a person that acts as a qualified securities lender as defined for purposes of chapter 3 and does not include a person acting as an insurance broker with respect to premiums.

(vii) Collateral arrangements prior to 2017 (transitional). A payment made prior to January 1, 2017, by a secured party, or to a secured party other than a nonparticipating FFI, with respect to collateral securing one or more transactions under a collateral arrangement, provided that only a commercially reasonable amount of collateral is held by the secured party (or by a third party for the benefit of the secured party) as part of the collateral arrangement. For purposes of this paragraph (a)(4)(vii), the term transaction generally includes a debt instrument, a derivative financial instrument (including a notional principal contract, future, forward, and option), and any securities lending transaction, sale-repurchase transaction, margin loan, or substantially similar transaction that is subject to a collateral arrangement. Solely for purposes of this paragraph (a)(4)(vii), a secured party may provide documentation to the withholding agent indicating that it is the beneficial owner of a payment described in this paragraph (a)(4)(vii), and a withholding agent may rely on such certification for purposes of its requirements under §1.1471-3(d) for determining whether withholding under chapter 4 applies.

* * * * *

Par. 12. Section 1.1474-1T is amended by revising paragraphs (d)(4)(iii)(C), (i)(1)(i), (i)(1)(ii), (i)(1)(iii)(C), (i)(2) introductory text, and (i)(2)(iii) to read as follows:
§1.1474-1T Liability for withheld tax and withholding agent reporting (temporary).

* * * * *

(d) * * *

(4) * * *

(iii) * * *

(C) Reporting by a U.S. branch treated as a U.S. person. A U.S. branch treated as a U.S. person (as defined in §1.1471-1(b)(135)) must report amounts paid to recipients on Forms 1042-S in the same manner as a U.S. withholding agent under paragraph (d)(4)(i) of this section.

* * * * *

(i) * * *

(1) * * *

(i) Beginning on July 1, 2014, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under §1.1471-4(d)) makes a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under §1.1471-3(d)(6), the withholding agent is required to report for July 1 through December 31, 2014, with respect to each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2) the information described in paragraph (i)(1)(iii) of this section.

(ii) Beginning in calendar year 2015, if a withholding agent (other than an FFI reporting accounts held by owner-documented FFIs under §1.1471-4(d)) makes during a calendar year a withholdable payment to an entity account holder or payee of an obligation and the withholding agent treats the entity as an owner-documented FFI under §1.1471-3(d)(6), the withholding agent is required to report for such calendar year with respect to each specified U.S. person identified in §1.1471-3(d)(6)(iv)(A)(1) and (2) the information described in paragraph (i)(1)(iii) of this section.

(iii) * * *

(C) For the period from July 1 through December 31, 2014, the total of all

withholdable payments made to the owner-documented FFI and with respect to payments made after the 2014 calendar year the total of all withholdable payments made to the owner-documented FFI during the calendar year;

* * * * *

(2) Reporting by certain withholding agents with respect to U.S. owned foreign entities that are NFFEs. Beginning on July 1, 2014, in addition to the reporting on Form 1042-S required under paragraph (d)(4)(i)(E) of this section, a withholding agent (other than an FFI reporting accounts held by NFFEs under §1.1471-4(d)) that makes a withholdable payment to, and receives information about any substantial U.S. owners of, a NFFE that is not an excepted NFFE as defined in §1.1472-1(c) shall file a report with the IRS for the period from July 1 through December 31, 2014, and in each subsequent calendar year in which a withholdable payment is made with respect to any substantial U.S. owners of such NFFE. Such report must be made on Form 8966 (or such other form as the IRS may prescribe) and filed on or before March 31 of the calendar year following the year in which the withholdable payment was made. The IRS shall grant an automatic 90-day extension of time in which to file Form 8966. Form 8809, "Request for Extension of Time to File Information Returns," (or such other form as the IRS may prescribe) must be used to request such extension of time and must be filed no later than the due date of Form 8966. Under certain hardship conditions, the IRS may grant an additional 90-day extension. A request for extension due to hardship must contain a statement of the reasons for requesting the extension and such other information as the form or instructions may require. The report must contain the following information--

* * * * *

(iii) For the period from July 1, 2014 through December 31, 2014, the total of all withholdable payments made to the NFFE and, with respect to payments made after the 2014 calendar year, the total of all withholdable payments made to the NFFE during the calendar year; and

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